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Dimension-Based Analysis
of Hypotheticals
from Supreme Court
Oral Argument

Edwina L. Rissland
Oct. 1987
CPTM #18

92-10696



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Acknowledgement: We wish to acknowledge DARPA Contract N00014-85-K-0017 for support of this research.

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Dimension-Based Analysis of Hypotheticals from Supreme Court Oral Argument

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Abstract

In this paper we examine hypotheticals taken from Supreme Court oral argument. We use the idea of a "dimension", which is employed in the case-based reasoning system HYPO, to analyze the hypotheticals and to speculate on how the Justices arrived at them. The case we consider is taken from the area of Fourth Amendment law concerning warrantless search and seizure.

1. Introduction

Before a case is decided by an appellate court, the advocates are given the opportunity to present their arguments orally. During these arguments, the judges have the opportunity to question counsel and, in particular, to pose hypotheticals. Since all concerned have had ample opportunity to research the issue and write or read briefs, oral argument is not just a forum to present the well worked out argument, but rather an opportunity to probe its weaknesses, oversights, and implications. In that the judges can be quite aggressive in their probing, the proceedings can be similar to a thesis defense, and counsel who has not adequately anticipated testing hypotheticals can encounter grave difficulties, even to the extent of being fooled into a slippery slope situation which ultimately undermines his position. Hypotheticals can be particularly potent in novel situations for which the body of relevant case law is sparse: they can provide gedanken experiments in which conditions can be tested in the way mathematicians test new conjectures. Hypotheses test and stretch the boundaries of legal concepts that, unlike mathematical concepts, are open-textured or even deliberately vague, especially in non-middle-of-the-road instances.

A central problem is to account for the generation of hypotheses. Since the space of all hypothetical cases is huge (actually uncountably infinite given that certain aspects take continuous variables) and the time for oral argument is small (30 minutes per side, including interruptions and questioning from the bench, in the case of the United States Supreme Court), it is necessary to consider what mechanisms might account for the hypotheticals actually used.

In our work on case-based reasoning ("CBR"), we have examined reasoning with hypotheticals. Our CBR program HYPO, which reasons with cases and hypotheticals in the area of trade secret law, uses several heuristics to propose new hypotheticals [Rissland & Ashley, 1986]. In this paper, we use some of the constructs and mechanisms developed in HYPO to analyze hypotheticals from the oral argument of one case argued before the United States Supreme Court in 1985.

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1.1 Background on Search and Seizure Law

The Fourth Amendment to our Constitution requires that searches and seizures be "reasonable".

² This has been interpreted to mean that in all, but a few exceptional circumstances, the police must have a warrant to search a person or his property. With respect to a person's home, the Court has been reluctant to allow exceptions to the warrant requirement and in the case of homes, has held most warrantless searches to be *per se* unconstitutional; thus, the old saw that "a man's home is his castle" is mostly apt. We say only "mostly" since there are limitations (e.g., police in pursuit of a person fleeing the scene of a crime do not need a warrant to enter a home where the suspect has fled). One of the primary reasons for keeping the scope of the exceptions narrow is that people have an *expectation of privacy* in certain places like their homes, hotel rooms, summer cabins, etc.

On the other hand, the Court has not held that a person's car is anywhere near so sacrosanct. On the contrary, it established the well-known "vehicle exception" to the warrant requirement. The exception was first recognized in *Carroll v. United States*, 267 U. S. 132 (1925), a prohibition era case which involved a warrantless search of an automobile which police stopped on a highway because they suspected it of being used to transport bootleg whiskey. Even though the facts of that case might stretch one's notion of reasonableness (the police tore apart the car's back seat in the course of the search), the Court in *Carroll* held that when the police have "probable cause to believe that a moving or temporarily stationed vehicle contains the fruits or instrumentalities of crime, evidence of crime or contraband, it may be searched without a warrant." The *Carroll* Court relied in part on the long tradition of (warrantless) searches of ships by the government. The Court also reasoned that a vehicle's mobility creates such an exigent situation, in which, for instance, the car might even leave the police's jurisdiction by fleeing across a boarder into another state or country, that the warrant requirement can be excepted.

In the intervening sixty years from *Carroll* to *Carney*, the vehicle exception has been delineated and not allowed to grow much. In fact, for purposes of search and seizure questions, the splitting of "places" into two categories, "homes" and "vehicles", seemed to work fairly well. For the most part, people could expect to be secure in their homes and police could go about their business unhindered; the boundaries between the two classes seemed clear. However, in recent years the line has become blurred, for now there are recreational vehicles, homes on wheels. In fact, the California Vehicle Code has a separate category for "house cars". ³ This presents a conundrum: should an RV, like a Winnebago or pickup truck with camper compartment, be considered a home or a vehicle? If it is the former, then the police need a warrant to search it; if it is the latter, then they don't. What was once an is-a hierarchy has now become a graph and the case law must be reconsidered in light of this novel (in the sense of new but not unusual) situation. In fact, other conundrums were possible all along, for instance, houseboats. ⁴ *California v. Carney* presented the

² "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U. S. Const., Amdt. 4.

³ A "house car" is "a motor vehicle originally designed, or permanently altered, and equipped for human habitation, or to which a camper has been permanently attached." Cal. Vehicle Code §362.

⁴ The Court has not yet resolved this one either, although it has considered situations like ocean-going ships; see *United States v. Cadena*, 588 F.2d 100.

hybrid situation and the Court was asked to decide whether a motor home is more like a "vehicle" or a "home" for Fourth Amendment purposes.⁵

While we examine the *Carney* case from the perspective of hypothetical reasoning, it could also be examined from the viewpoint of concept formation in machine learning [Mitchell, 1983; Lenat, 1977], legal history [Levi, 1949; Radin, 1933] or both [Rissland & Collins, 1986], or philosophy of science [Kuhn, 1970; Lakatos, 1976]. Legal examples, such as *Carney*, provide interesting data for these other lines of inquiry since not only are they rich in detail but also they present certain aspects not found in more standard AI domains, whose ingredient concepts are more clearcut.

1.2 Background on HYPO's Dimensions

HYPO is a case-based reasoning program which operates in the area of trade secret law [Rissland & Ashley, 1987; Ashley & Rissland, 1987a, b; Ashley, 1986]. One of the primary mechanisms used by HYPO is a "dimension". It summarizes ways of arguing or approaching an issue and relates clusters of legally relevant facts to particular conclusions. In particular, a dimension indicates what variations of the facts, especially those "focal" aspects which are at the crux of the issue, make the case weaker or stronger for one side or the other. While HYPO operates in the area of trade secrets law, the idea of a dimension is quite general.

As an illustration of a HYPO dimension, consider the typical trade secrets case, in which plaintiff and defendant produce competing products and the plaintiff alleges that the defendant misappropriated secret production information. Additional facts might be that the plaintiff disclosed "secret" information to the defendant, perhaps in connection with an attempt to enter into a sales or other agreement with the defendant or that a former employee of the plaintiff with knowledge of the trade secret enters the employ of the defendant and brings with him trade secret information which he learned or developed while working for plaintiff.

There are several standard ways of approaching such a trade secrets case; for instance, one can emphasize the employee who switched or the disclosures made. These standard approaches are the basis of HYPO's dimensions. If one emphasizes the disclosures made by the plaintiff – that is, the dimension in HYPO called "knowledge-voluntarily-disclosed" – the more people to whom such disclosures were made, the worse off the plaintiff is and in one extreme, there may be so many disclosures, that there is essentially no one left to have a secret from (in the other extreme, there are no disclosures).

Dimensions encode the legal knowledge of what clusters of facts, according to a particular point of view summarizing lines of cases, have legal relevance for a particular claim, are prerequisite for dealing with a claim, and contribute to weaknesses and strengths. A key aspect of dimensions is that they organize the prerequisite facts in such a way so that the most important ones – the focal slots – can be analyzed and manipulated in a legally meaningful way, for instance, to strengthen or weaken a case. The HYPO trade secrets dimension "knowledge-voluntarily-disclosed" captures the knowledge that the more people who have been told about the secret, the worse off the teller is and its focal slot is the number-of-disclosees. Another HYPO dimension is "telltale-signs-of-

⁵Note, for other purposes, the answer might be quite different. For instance, with regard to taxes, an RV can be considered a home, and therefore qualify its owner or manufacturer for certain tax considerations, as long as it meets certain IRS criteria (e.g., contains a bedroom or sleeping area). Of course, the subquestion of what constitutes a "bedroom" or "sleeping area" is, itself, subject to debate; see *20th Century Manufacturing Company v. The United States*, 444 F.2d 1109 (1971) in which the design details, including ceiling height, were considered.

misappropriation"; according to this dimension, the plaintiff's argument is strengthened if there are certain telltale signs that the defendants sought to misappropriate the plaintiff's alleged trade secret information, e.g., that the corporate defendant paid a very high bonus to get the employee to bring with him a copy of the code he worked on for the plaintiff.

Dimensions are used by HYPO in several ways. They are used as indices into an existing Case-Knowledge-Base and they are used by various submodules in HYPO's case-based reasoning [Rissland & Ashley, 1987]. The library of dimensions and the Case-Knowledge-Base are the two primary repositories of HYPO's legal knowledge.

HYPO starts with a statement of facts, proceeds through a dimension-based legal analysis, and concludes with presentation of an argument outline complete with case citations. Given a statement of the current fact situation, "cfs", HYPO begins its legal analysis. A CASE-ANALYSIS module runs through the library of dimensions and produces a case-analysis-record which among other things, records which dimensions apply to the cfs and which nearly apply (i.e., are "near-misses"). On the basis of this analysis, the FACT-GATHERER may request additional information from the user. Given a "complete" set of facts, the CASE-POSITIONER module uses the case-analysis-record to create a claim-lattice, which organizes cases from the CKB according to a measure of applicable and near-miss dimensions shared between cases and the current fact situation, and allows HYPO to determine which cases are most-on-point, least-on-point or in between [Ashley & Rissland, 1987b]. This module also allows HYPO to spot conflict dimensions - that is, dimensions which point to conflicting conclusions - and gaps in the case base. The BEST-CASE-SELECTOR and 3-PLY-ARGUMENT modules then select cases offering support for the user's case and those cutting against it, which must be distinguished, and suggest the skeleton of an argument complete with case citations [Ashley & Rissland, 1987a].

The dimensions, case-analysis record, and claim lattice also enable the HYPO-GENERATOR module to spawn legally interesting hypotheticals: for instance, a "conflict hybrid" case, which brings together two competing lines of cases which conflict, or a hypothetical which fills in a sparse area of the CKB. With its use of dimension-based heuristics, such as "Make a case extreme (with respect to a given dimension)", "Enable a near-miss dimension", "Dis-able a near-get dimension", "Make a hybrid", "Pose a conflict", the HYPO-GENERATOR, in effect, does a heuristic search of the space of all possible cases [Rissland & Ashley, 1986].

2. The case of *California v. Carney*

2.1 The Facts

California v. Carney, 105 S. Ct. 2066 (1985) involved the warrantless search for marihuana of a motor home located in a parking lot in downtown San Diego. Police had been given a tip that the owner of the motor home was engaged in exchanging marihuana for performance of sex acts. On the day of the incident, a Drug Enforcement Administration agent observed Mr. Carney and a young Mexican boy enter Carney's motor home. During this time, curtains were drawn across the motor home's windows, including the windshield.

The agent and other agents then kept the vehicle under surveillance for approximately an hour and a quarter, at which time they stopped the youth after he emerged from the motor home. He said he had received marihuana for sex and at the agents' request, he returned to Carney's motor home and knocked on the door. Carney opened the door and stepped outside. Without a warrant

or Carney's consent, one agent entered the motor home and observed marihuana. Carney was then taken into custody and the motor home taken to the police station, where an additional search revealed marihuana in the cupboards and in the refrigerator.

The parking lot where all this happened was "but a few blocks from the courthouse in downtown San Diego where dozens of magistrates were available to entertain a warrant application. In addition, a telephone warrant was only 20 cents and the nearest phone booth away." *Carney* at p. 2076.

The issue is whether the police should have granted Carney's motor home the legal respect accorded homes and obtained a warrant or whether they were correct in treating it as a motor vehicle and operating within the realm of the vehicle exception. *Carney* exemplifies a typical conflict between a citizen's expectations (of privacy, to be left alone, etc.) and the desires of the police to act aggressively and to go unfettered in drug investigations. This case also exemplifies the sort of situation where there is not such a high exigency factor (e.g., the suspected criminal is not actively fleeing). In this case, there surely was opportunity to obtain the warrant.

2.2 The Issues

In their briefs and arguments, counsel for the State of California focussed on the issues surrounding the determination of what constitutes a standard which is workable enough so that the police can use it to distinguish between homes and vehicles. He is asking the Court to elaborate an objective "bright line" standard, which would be easy for the police to apply. In a sense, what would be ideal would be articulation of a HYPO-like "dimension".

The home/vehicle dichotomy, one should note, is somewhat artificial. Its attractiveness lies in part in its seeming objectiveness and the common sense rationale about exigent mobility used to support it. Its difficulty lies in the need for subjective assessment of what constitutes "homeness" or "vehicle-ness" in borderline cases and the existence of a competing expectation of privacy rationale which goes against it. The distinction, as this case shows, has become something less than clear since the Court first "signed up" for it in *Carroll*. Perhaps an artful house-car hypothetical at the argument of *Carroll* would have dissuaded the Court from approaching the problem this way. Certainly, law professors and law students have played with such hypotheticals since.

To explore the various approaches to the case, the Justices explore the issues from varying points of view derived from already existing lines of cases. In HYPO's framework, what they seem to do is push and pull the case along various dimensions, place it on conflicting dimensions, and otherwise move it through the space of relevant cases.

We call the two major dimensions, which can be seen in the oral argument, inherent-mobility and use-as-home. The latter is closely tied to the more general expectation-of-privacy. They also address the purpose of the vehicle or structure. Other dimensions, or perhaps sub-dimensions or facets of these,⁶ which we see include:

1. inherent-mobility

- similarity-to-car

⁶Since, for the purposes of this paper, we wish to skirt the jurisprudential and knowledge engineering issues necessary to create a full library of dimensions for this area of case law, the ones we give are by no means to be considered a completely designed set.

- potential-speed-of-departure
- means-of-locomotion
- at-rest-or-moving

2. expectation of privacy/use-as-home

- residential-appearance
- size-and-capacity-for-domicile
- on-land-or-on-water
- attachment-to-location

Since we do not need such a fine legal analysis to consider the hypotheticals actually present in the oral argument, we won't elaborate on these finer dimensional distinctions. For the most part, we use mostly the "top" two aspects of inherent-mobility and use-as-home as the dimensions, and the lower level ones as facets, sometimes almost as focal slots, of them. Almost all the action occurs because inherent-mobility and use-as-home, which both apply to the *Carney* fact situation (i.e., are hits, not near misses), are in conflict. A fact situation strong on both creates a real dilemma for the warrantless search issue; this is a situation which has some very house-like elements and which has great potential for mobility. Something, weak on both, is not so interesting for the *Carney* case. Finding the cross-over point where one dimension prevails the over the other or even how to assess the tradeoffs would be one goal of the Court's inquiry.

2.3 The Oral Argument

In the oral argument, the Justices are testing the counsels' proposals for standards and ways (i.e., dimensions) of looking at the issue of warrantless searches, and in particular whether to think of an RV as home or vehicle (or neither or both). By pushing the case around on various aspects – or in HYPO's terms along dimensions – they are trying to uncover potential flaws, which, if not remedied, could come back to haunt them in future cases. In essence, they are engaged in troubleshooting and debugging, much as mathematicians, computer programmers and strategic planners do. They are also trying to determine whether an existing way of looking at such an issue can be "mapped over" to resolve the instant case and thereby save the Court from unnecessary creation of new doctrine.⁷ Thus, they are engaged in analogical problem solving, another primary tool of mathematicians and computer programmers who are "lazy" in a good sense.

Excerpts from the oral argument are given in Figure 1. Questions posed by a Justice are indicated by a "J"; responses of the attorney by an "A". Hypotheticals we discuss are all posed by the Justices and are indicated with a **J**. The oral argument starts out with a discussion of the mobility issue. The attorney arguing at this point is Louis Hanoian, counsel for the State of California. After a brief statement of the facts and the need for bright line guidance, he takes the bait of "guideline of wheels" as the primary index (or in our dimensional terms, a focal slot) for determining mobility.

The first hypothetical, **J-1**, posed by Justice O'Connor, presents the conflict between the two dimensions *inherent-mobility* and *use-as-home*. Her hypothetical is derived by adding to

⁷The Court did something this in the *Carroll* case when it brought in existing law on searches of ships.

the Carney cfs (current fact situation) (1) a fact ("in one of those mobile home parks") to make the vehicle more home-like, that is, to strengthen the cfs along the use-as-home dimension; and (2) facts ("hooked up to water and electricity") that make it less mobile, that is, weaken it along the inherent-mobility dimension. She hammers home the contradiction by repeating the RV still has its wheels on.

The attorney stubbornly hangs on to the index of wheels and strengthens the facts along this dimension by emphasizing the presence of its engine. He is met head on with an equally strengthened variation of ****J-1**** along the use-of-home dimension: ****J-1a**** where (1) people are living in it *as a home* (our emphasis) and (2) are paying rent. In ****J-1a**** the conflict still stands, and is actually intensified with a hypo stronger along both of the conflict dimensions.

At ****J-2****, the Justices continue to work on the mobility aspect by posing a hypothetical that has wheels but no means of propulsion. In response, since "wheels" are no longer a reliable index of mobility, counsel generalizes his index to "self-propelled". This is to no avail since in ****J-2a**** the Justices come back with another conflict hypo about a self-propelled vehicle plugged into plumbing and electricity⁸ which is strong along both the inherent-mobility and use-as-home dimensions. ****J-2b**** adds some time considerations, which strengthen use-as-home and weaken inherent-mobility. Perhaps, more importantly, ****J-2b**** shows that even such "objective" indicia have complicating aspects which might make the police's use of them neither easy nor desirable. The interchange around these second hypos shows that wheels do not always constitute reliable indicia of mobility. That is, wheels are certainly not sufficient and neither is self-propelled. There is some hint that self-propelled might be necessary.

****J-3****, the next hypo, shows (again) that self-propelled, itself, is not a good enough criterion and that based on this alone, anomalous situations can arise. In answering, Mr. Hanoian sticks to his analysis.

In ****J-4****, the Justices pose the hypo of a houseboat. In ****J-4a**** they strengthen its use-as-home aspects and present the conundrum of two very houselike structures being treated completely differently (under Hanoian's analysis). Hanoian responds with an analogy of a car parked next to a house that makes the discrepancy seem not so severe. Despite some playful exchanges, the Justices continue on the houseboat-beside-a-house conundrum by making the houseboat less mobile and more homelike (tied there for 36 years).

Thus, in these excerpts from the oral argument one can see the Court posing many hypos which conflict on two dimensions. The oral argument contains many more interesting "conflict" hypos, for instance "a great big stretch Cadillac" which has been driven into a parking lot and had curtains pulled around it and the "old covered wagons" of the pioneers. Although we chose to discuss hypos posed mostly to Mr. Hanoian, counsel for the State, there is no lack of hypos to the other side as well.

Many of the hypos are generated by strengthening and weakening the facts. Others clearly present conflicts. Thus, the kind of heuristics used by HYPO to generate hypotheticals, like "Make the case weaker/stronger", "Make a hybrid", etc., could be at work here as well.

With regard to the selection of the "seed" case to which to apply the hypo generation heuristics, often it is the facts of the original case or the current hypo (e.g., see the ****J-1**** or ****J-2**** series).

⁸****J-2a**** could also be thought of as derived from ****J-1**** which also mentions hook ups to electricity. Thus, a map of the "constructional derivation" of the hypos would probably include back pointers to more than one antecedent hypo.

Sometimes, it is the facts of another case which the Justices have been reminded of by citation. For instance, the *Carroll* case might have reminded the Justices of the situation involving ships and later on in the oral argument the Justices pose a hypo concerning covered wagons, which was mentioned in one of the briefs.

2.4 The Decision and The Opinion

The Court held that (1) warrantless search of a *mobile* (our emphasis) motor home did not violate the Fourth Amendment, and (2) the search was not unreasonable. In its opinion, the Court, speaking through Chief Justice Burger, concentrated on the approaching the issues in terms of mobility and "on the presence of the vehicle in a setting that objectively indicates that the vehicle is being used for transportation." Opinion at p. 2071. The Court stated that these two requirements – mobility and setting – ensure that law enforcement officers are not unnecessarily hamstrung in their efforts and assure that legitimate privacy interests are also not harmed. They specifically decline to rule on many details which give rise to conflicting lines of analysis.⁹ In their opinion, as opposed to the oral argument, they don't become involved in some of the kind of dimensional nitty-gritty that HYPO might.

In the dissent, Justice Stevens, who was joined by Justices Brennan and Marshall, states that such key aspects like "character of place to be searched" should be considered. They, of course, feel that a motor home is closer to a home than the majority does. They write that mobility alone is not a sufficient condition to resolve such questions.¹⁰

3. Comments & Conclusions

In this paper, we¹¹ have examined the oral argument of one case in some detail from the perspective of "dimensions" with the goal of analyzing the use and generation of hypotheticals. A fuller analysis would require further reading of supporting documents such as briefs, opinions of relevant cases, sections of relevant statutes, and scholarly analyses. Other modes of analysis such as those advanced by Toulmin for analyzing argument would also be useful, especially to bridge the gap between certain high level argument goals and the specific uses hypotheticals serve [Rissland, 1984].

However, we feel that oral arguments, such as presented in *Carney*, provide a rich source of data for those interested in argument and the use of hypotheticals and that the framework of dimensional analysis used in our HYPO Project provides a good framework for analyzing it. Our approach enables us to grapple with such a deliberately adversarial problem area, in which there

⁹We need not pass on the application of the vehicle exception to a motor home that is situated in a way or place that objectively indicates that it is being used as a residence. Among the facts that might be relevant in determining ...is its location, whether the vehicle is readily mobile or instead, for instance, elevated on blocks, whether the vehicle is licensed, whether it is connected to utilities, and whether it has convenient access to a public road." Fn. 3, p.2071

¹⁰"If "inherent mobility" does not justify warrantless searches of containers, it cannot rationally provide sufficient justification for the search of a person's dwelling place. p. 2077.

¹¹The author acknowledges the able assistance she has received in this research from Kevin Ashley (University of Massachusetts), Eileen Pahl and Mark Raffman (Harvard Law School), and Eric Deller (Stanford Law School).

is no side with *the* right answer but rather where everything is a matter of degrees and typically conflicting viewpoints.

Figure 1. Excerpts from Oral Argument of California v. Carney

A: So it is essential that they (the police) be provided with bright line guidance...and guidance which is workable.

J: Would you buy the guideline of wheels?...That if the vehicle has wheels on it, it's not a home.

A: If the vehicle has wheels on it, I think that that makes it mobile and it would be subject to the exception...But I am looking for a little bit more beyond just wheels. We are looking for self-locomotion, self-propelling.

J: You want to cloud it up now.

J-1: Well, what if the vehicle is in one of these mobile home parks and hooked up to water and electricity but still has its wheels on?

A: If it still has its wheels and it still has its engines, it is capable of movement and it is capable of movement very quickly.

J-1a: Even though the people are living in it as a home are paying rent for the trailer space, and so forth?

J-2: May I inquire, just so I understand your position? Is it that the vehicles have wheels? Could a trailer without a tractor in front of it qualify?

A: No. I don't think it would...Our position is that if the officer looks at this conveyance and determines that it has the objective indicia of mobility -

J: It has to be self-propelled?

A: Yes, I would agree with that.

J: So you wouldn't apply your thought to a trailer park?

Q: Not when it's parked, no. When it's attached, yes, in the same way that one would -

J-2a: But then what about a self-propelled vehicle that's plugged into the plumbing and electricity?

...

J-2b: And you would apply it, even if it had been parked there three months or so, because your officer wouldn't really know how long it had been parked?

A: That's correct.

J: Thank you.

****J-3**:** What about a camper's tent, if the camper takes his things out of the motor home and pitches a tent next to it?

A: The motor home would be subject to search...Not the tent.

J: May I ask why wouldn't the tent just be as mobile as the self-propelled vehicle? I gather you can pull it down pretty fast -

J: It doesn't have wheels right?

A: It doesn't have wheels.
(Laughter.)

J: But it is moveable.

A: It is moveable.

****J-4**:** What would you do with a houseboat?

A: A houseboat? I think that would be covered and I think that th: -

J: It has wheels?

A: No, it's a vessel and covered by the same rule...

****J-4a**:** Well, I want to be more specific. There is a houseboat. It's tied up to a dock and has no motor on it at all. It's just sitting there. And it's hooked up to the sewage, electricity, etc., and it's right beside a house. The house is covered and the boat is not?

A: It's sort of like an automobile that is parked right next to the house in the driveway. The automobile might not be covered, and the house is.

J: But the automobile has a motor in it -

A: That's correct.

J: - and the houseboat does not.

A: No there may be oars...

J: There "may be." May be. I've seen houses moved, too.

A: ...Perhaps in Your Honor's example, they would be looking to see if there's oars there. There's no motor. There's no way to move that thing.

J: Well, let me add one more thing. It's been tied up there for the last 36 years.

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